S/2 **S.B. CIVIL WRIT PETITION NO.5815/2007.**
Raj Kumar Jain Vs. State & Ors.

Date of Order :: 26th September 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Dr. Sachin Acharya, for the petitioner.

....

BY THE COURT:

By way of this writ petition, the petitioner, working on the post of Gram Sevak, seeks to question the order dated 13.07.2007 (Annex.5) issued by the State Government in its Panchayati Raj Department whereby he has been transferred from Panchayat Samiti, Ladnu to Panchayat Samiti, Raniwara; and the order dated 19.07.2007 (Annex.9) passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur dismissing his appeal (No.984/2007) against the said transfer order.

The petitioner has averred in the writ petition that he was initially appointed as Godown Keeper at Cotton Complex, Sriganganagar on 21.11.1992 and was later on absorbed as Gram Sevak by the Panchayati Raj Department; that he was relieved from Tehsil and District Hanumangarh and was directed to join at Zila Parishad, Nagaur and thereafter he was posted at Panchayat Samiti, Ladnu; that he had been performing his duties to the satisfaction of his higher officials but then, he has been subjected to frequent transfers and

within a short span of about an year, has been transferred four times.

The petitioner has narrated such so-called frequent transfers taking the following averments in the writ petition:-

> "4. That in this series, the petitioner was first transferred from Panchayat Samiti Ladnu to Panchayat Samiti Tanwara vide order-dated 26.06.06 passed by respondent No.3. A copy of the order-dated 26.06.06 is submitted herewith and is marked as **Annexure-2.**
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> 5. That thereafter, the petitioner was transferred from Gram Panchayat Tanwara to Gram Panchayat Jaswantgarh vide order-dated 30.06.2007 passed by the respondent No.3. A copy of the order-dated 30.06.07 is submitted herewith and is marked as **Annexure-3.**
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> 6. That barely twelve days could pass and the petitioner was again transferred from Panchayat Samiti Jaswantgarh to Makrana, Nagaur vide order-dated 12.07.07. It is relevant to mention here that in this transfer order the petitioner was shown to be working at Panchayat Samiti Ladnu whereas he was working at Jaswantgarh. This clearly shows that the order was passed on utter non-application of mind. A copy of the order-dated 12.07.07 is submitted herewith and is marked as **Annexure-4.**
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> 7. This immediately on the next day i.e. 13.07.07 another transfer order was issued whereby the petitioner was shown to be transferred from Panchayat Samiti Ladnu to Panchayat Samiti Raniwara (Jalore). A copy of the order-dated 13.07.07 is submitted herewith and is marked as **Annexure-5.** ....."

Being aggrieved of the transfer order dated 13.07.2007 (Annex.5), the petitioner preferred an appeal before the

Rajasthan Civil Services Appellate Tribunal, Jaipur that has been dismissed by the impugned order dated 19.07.2007 (Annex.9).

Seeking to assail the orders aforesaid, learned counsel for the petitioner has referred to Rules 289, 290 and 291 of the Panchayati Raj Rules, 1996 and while strongly relying upon the requirements of a circular dated 24.02.2007 (Annex.7) submitted that normally an employee like the petitioner is not to be transferred out of the District; that there is no such administrative exigency spelt out for which the petitioner is required to be transferred to a far distant place; that the transfer order has been passed without obtaining prior sanction of the higher officials; and that seniority of the petitioner is likely to be affected for his transfer outside the District when nothing has been stated about protection of his seniority. Learned counsel has also contended that the petitioner has been subjected to frequent transfers and has referred to the four transfer orders made in his relation one after another. Learned counsel also contended that the impugned order of transfer has been issued with total non-application of mind inasmuch as the authority concerned was not aware as to where the petitioner was posted at; and the place of the posting of the petitioner has wrongly been mentioned as Panchayat Samiti, Ladnu in the impugned order

dated 13.07.2007. Learned counsel also submitted that the wife of the petitioner is serving as a teacher at the same place; and as per the policy of the State Government, normally the working spouse are to be posted at the same place. According to the learned counsel, the Tribunal has not considered the facts of the case in their proper perspective nor has applied the law applicable to the case and, for the reasons and on the grounds aforesaid, the impugned orders deserve to be quashed.

Having given a thoughtful consideration to the submissions made by the learned counsel for the petitioner and having examined the matter in its totality, this Court is clearly of opinion that the present petition for writ is bereft of substance and does not merit admission.

In the first place, it is noticed that the petition is founded on incorrect presentation of facts particularly in relation to the posting of the petitioner. As noticed above, the petitioner has attempted to state that by the order dated 26.06.2006 (Annex.2) he was transferred from Panchayat Samiti, Ladnu to Panchayat Samiti, Tanwara. The averment is not correct inasmuch as by the said order dated 26.06.2006 he was sent by the Panchayat Samiti, Ladnu from Headquarters to Gram Panchayat, Tanwara. There is no question of any transfer to so-called “Panchayat Samiti, Tanwara”. Then, by the order

dated 30.06.2007 (Annex. 3) again, he was transferred by the very same Panchayat Samiti, Ladnu from Gram Panchayat, Tanwara to Gram Panchayat, Jaswantgarh. The fact remains that the petitioner was working as Gram Sevak with Panchayat Samiti, Ladnu and the aforesaid two transfer/posting orders (Annexs. 2 & 3) were made by the said Panchayat Samiti, Ladnu only and not by the State Government.

Yet further, the averments taken in paragraph 6 of the writ petition that by the order dated 12.07.2007 (Annex. 4) he was transferred from Panchayat Samiti, Jaswantgarh to Makrana is again incorrect inasmuch the said order states about his transfer from Panchayat Samiti, Ladnu to Panchayat Samiti, Makrana. The suggestion as if the authority has wrongly mentioned his present place of posting with Panchayat Samiti, Ladnu, is not a correct projection of facts. The petitioner was at Panchayat Samiti, Ladnu and has correctly been described as such.

It is of course true that the two orders dated 12.07.2007 and 13.07.2007 (Annexs. 4 & 5) have been issued one after another by the Government in its Panchayat Raj Department but then, it has not been shown if the order dated 12.07.2007 was at all implemented? It appears that before the said order dated 12.07.2007 was put into effect, the very next day i.e., 13.07.2007, the order was issued transferring the petitioner

from Panchayat Samiti, Ladnu to Panchayat Samiti, Raniwara (Jalore) for administrative reasons.

Reference to the circular Annexure-7 and Rules 289, 290 and 291 of the Panchayati Raj Rules, 1996 does not make out any case that the transfer order suffers from violation of any statutory requirement. Rules 289, 290 and 291 of the Rules of 1996 read as under:-

> "**Rule 289. Transfer within the district.**-(1) The name of the employee desiring transfer or desired to be transferred within the district shall be communicated to the district Establishment Committee by the Panchayat Samiti.
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> (2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or Zila Parishad concerned on the recommendation of the district Establishment Committee.
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> (3) State Government may issue orders regarding transfers from time to time. In case District Establishment Committee/Standing Committee of Panchayat Samiti does not agree, Chief Executive Officer/Vikas Adhikari as the case may be, shall carry out orders of the State Government.
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> (4) On transfer of the employee, his confidential roll and service record will be transmitted, without avoidable delay, to the Panchayat Samiti/Zila Parishad to whom his services have been transferred.
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> **Rule 290. Transfer outside the district.**- (1) The name of the employee desiring transfer or desired to be transferred from one district to another shall be communicated to the Director by the Panchayat Samiti or the Zila Parishad, as the case may be.

(2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or the Zila Parishad concerned on the recommendation of the State Government against the vacant posts existing at such time. The State Government may transfer any member of service from one Panchayat Samiti to another Panchayat Samiti within the same district or outside it, from one Zila Parishad to another Zila Parishad, or from Panchayat Samiti to Zila Parishad or from a Zila Parishad to Panchayat Samiti and may also stay the operation of, cancel, any order of transfer made under these rules. Chief Executive Officer or Vikas Adhikari concerned shall carry out such orders.

(3) On transfer of an employee, his confidential roll and service record will be transmitted without avoidable delay to the Panchayat Samiti/Zila Parishad to whom his services have been transferred.

Rule 291. Seniority on transfer.- Seniority of an employee transferred outside the district, by the State Government under Sub-sec. (8-A) of Sec. 89 shall be determined by the Committee of the District to which he is transferred:-

(i) if the transfer is made on the request of the employee, his seniority shall be fixed at the bottom of the seniority list of the cadre to which he belongs; and

(ii) if the transfer is made on administrative or other reasons, his seniority shall be fixed on the basis of his continuous length of substantive service on an analogous post."

(underlining supplied for emphasis)

Sub-section (8-A) of the Rajasthan Panchayati Raj Act, 1994 reads as under:-

> " Notwithstanding anything contained in Sub-sec. (8), the State Government may transfer any member of the service from one Panchayat Samiti to another Panchayat Samiti, whether within the same district or outside it, from one Zila Parishad to another Zila Parishad, or from Panchayat Samiti to Zila Parishad or from a Zila Parishad to a Panchayat Samiti and may also stay the operation of, cancel, any order of transfer made under Sub-sec. (8), or the rules thereunder:"

A bare look at the Rules aforesaid and the source of wide powers of State Government that is, Sub-section (8-A) of Section 89 of the Panchayati Raj Act, 1994 makes it clear that it is within the competence of the State Government to transfer an incumbent like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside the District. The transfer order relating to the petitioner does not suffer from any want of authority nor has been issued in violation of any statutory condition or requirement. There does not appear any requirement for the Government to state and specify the administrative reason wherefor the order of transfer has been issued. Further, the transfer order in relation to the petitioner having been issued by the State Government on administrative reasons, the operation of Rule 291 is clear on maintaining his seniority on the basis of continuous length of substantive service; and a feeble suggestion on the seniority being affected is neither correct nor makes out any case of

any prejudice having been caused to the petitioner in his service conditions.

So far the policy suggested by way of the circular dated 24.02.2007 (Annex.7) is concerned, the same remains a matter to be considered by the competent authority while effecting a transfer; and the petitioner is not invested with any right to question the transfer order on its basis. The order dated 24.02.2007 is nothing but a proposition that ordinarily the Gram Sevak will not be transferred outside the District but in special circumstances, the competent authority could do so with the permission of the higher officials. It is noticed that the impugned order dated 13.07.2007 has been issued by none other than the Deputy Secretary to the Government in its Panchayati Raj Department.

So far the aspect of the wife of the petitioner serving at a particular place is concerned, again, it remains only a matter of policy; and it has not been shown that by transferring the petitioner any statutory requirement has been violated.

The Tribunal has taken into comprehension all the facts and circumstances of the case and has rightly pointed out that neither a case of frequent transfers nor of any violation of statutory provisions is made out. The Tribunal has rightly observed that the transfer policy was only directory in nature and in case of personal difficulties, it was for the petitioner to

have made a proper representation to the authority concerned.

Having examined the material placed on record and the submissions made on behalf of the petitioner, this Court is clearly of opinion that there is no cause or reason to interfere with the impugned orders in extraordinary writ jurisdiction of this Court.

The writ petition fails and is, therefore, rejected.

(DINESH MAHESHWARI), J.

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